

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

**JENNIFER PIGGOTT and  
SLADE PIGGOTT,**

**Plaintiffs,**

**v.**

**GRAY CONSTRUCTION, INC.,**

**Defendant/Third-Party Plaintiff,**

**v.**

**COOPER'S STEEL FABRICATORS,  
INC., et al.,**

**Third-Party Defendants.**

**HWASHIN AMERICA CORPORATION**

**Intervener Plaintiff**

**v.**

**GRAY CONSTRUCTION, INC.**

**Case No. CV-06-1158-F**

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**HWASHIN AMERICA CORPORATION'S  
MOTION TO DISMISS GRAY CONSTRUCTION, INC.'S  
FIRST AMENDED THIRD PARTY COMPLAINT**

Comes now Hwashin America Corporation ("Hwashin") and hereby moves this Court for an order dismissing all claims asserted by Gray Construction, Inc. ("Gray") against Hwashin in Gray's First Amended Third-Party Complaint. (Doc. 122) As grounds for this motion, Hwashin states as follows:

1. Gray filed its Third-Party Complaint against Hwashin on June 8, 2007. (Doc. 26)

2. Hwashin thereafter filed its Motion to Dismiss Gray Construction, Inc.'s Third-Party Complaint (Doc. 83) and, in further support thereof, filed its Reply to Gray Construction, Inc.'s Response to Hwashin's Motion to Dismiss. (Doc. 115) Hwashin brought its motion pursuant to Fed. R. Civ. P. 12(b)(6) based upon Gray's failure to state a claim upon which relief could be granted and based upon Gray's failure to bring its claims against Hwashin as compulsory counterclaims as required by Fed R. Civ. P. 13(a). This motion remains pending.

3. Gray filed its First Amended Third-Party Complaint on September 21, 2007. (Doc. 122) Gray's First Amended Third-Party Complaint contains identical allegations and claims against Hwashin as its original complaint.

4. Hwashin hereby incorporates herein by reference its previously filed Motion to Dismiss (Doc. 83) and its Reply to Gray's Response to Hwashin's Motion to Dismiss (Doc. 115). For the reasons set forth in these previously filed submissions, Gray's claims against Hwashin contained in Gray's First Amended Third-Party Complaint are due to be dismissed.

WHEREFORE, based upon the foregoing, Hwashin hereby moves this Court for an order dismissing all claims asserted against it by Gray in Gray's First Amended Third-Party Complaint.

Respectfully submitted,

/s/J. Lister Hubbard  
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**CERTIFICATE OF SERVICE**

I hereby certify that on October 5, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system that will send notification of such filing to the following:

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